

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 0301006634
)	
VINCENT CLEVELAND,)	
)	
Defendant.)	

Submitted: May 10, 2006
Decided: August 16, 2006

ORDER

UPON DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF

DENIED

Upon review of Defendant Vincent Cleveland’s Motion for Postconviction Relief and the record, it appears to the Court that:

1. Following a jury trial, Defendant was sentenced to 10 years at Level V, suspended after 5 years, for 3 years at Level IV CREST, suspended after successful completion of CREST for 18 months at Level III, the first 5 years at Level V are mandatory time, for Trafficking in Cocaine; and 5 years at Level V, mandatory time, for Possession With Intent to Deliver Cocaine. On September 9, 2003, Defendant filed an appeal with the Supreme Court, which was denied on January 27, 2004.

2. Defendant's current *pro se* motion for postconviction relief was filed on May 5, 2006. In his motion, Defendant asserts ineffective assistance of counsel on the following grounds:

1. Ineffective Assistance of Counsel

Failure to object to violations of the hearsay & confrontation clause of the Sixth Amendment deprived movant of effective assistance of counsel and allowed evidence to be admitted in violation of the Fourth Amend.

2. Failure to properly raise grounds on appeal

Movant was prejudiced by counsel's lack of knowledge of the law when there was a more strategic defense but failed to understand the logic of that defense.

3. Failure to raise grounds of illegal arrest

On appeal counsel made mention of the arrest but never attacked the specifics of this argument, instead he chose to pursue a weaker avenue of defense.

3. In evaluating a postconviction relief motion, the Court must first ascertain if any procedural bars of Superior Court Criminal Rule 61(i) apply.¹ If a procedural bar is found to exist, the Court should refrain from considering the merits of the individual claims. This Court will not address claims for postconviction relief

¹ See *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); Super. Ct. Crim. R. 61(i).

that are conclusory and unsubstantiated.² Pursuant to Rule 61(a), a motion for postconviction relief must be based on "a sufficient factual and legal basis." In addition, pursuant to Rule 61(b)(2), "[t]he motion shall specify all the grounds for relief which are available to movant ..., and shall set forth in summary form the facts supporting each of the grounds thus specified." Any ground for relief not asserted in a prior postconviction relief motion is thereafter barred unless consideration of the claim is necessary in the interest of justice.³ Similarly, grounds for relief not asserted in the proceedings leading to the judgment of conviction are thereafter barred, unless the movant demonstrates: (1) cause for the procedural default; and (2) prejudice from the violation of movant's rights.⁴ Any formerly-adjudicated ground for relief, whether in a proceeding leading to the judgment of conviction, in an appeal, or in a postconviction proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.⁵

² See *Younger*, 580 A.2d at 555; *State v. Conlow*, Del. Super., Cr. A. No. IN78-09-0985R1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr. A. No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

³Del. Super. Ct. Crim. R. 61(i)(2).

⁴Del. Super. Ct. Crim. R. 61(i)(3).

⁵Del. Super. Ct. Crim. R. 61(i)(4).

4. Defendant's motion is not time-barred pursuant to Rule 61(i)(1), since it was filed within 3 years from the date the Supreme Court issued its mandate on appeal. The time limit was changed from 3 years to one year, effective July 1, 2005, and applies to all cases where the judgment of conviction becomes final after that date. In this case, however, the former time limit of 3 years applies, because the mandate issued February 12, 2004. This is Defendant's first motion for postconviction relief. Therefore, Rule 61(i)(2), which precludes the consideration of any claim not raised in a previously filed postconviction motion, does not apply. The Rule 61(i)(3) bar regarding grounds for relief not asserted in the proceedings leading to the judgment of conviction also does not apply.

5. Superior Court Criminal Rule 61(i)(4), however, bars reconsideration, on a postconviction relief motion, of any ground for relief that was formerly adjudicated. The issue of whether the fruits of an allegedly illegal search and seizure should be suppressed was addressed both by this Court when it denied Defendant's motion to suppress, and the Supreme Court on direct appeal.

6. This Court held a pre-trial suppression hearing on March 18, 2002. At the conclusion of the hearing, the Court denied Defendant's motion to suppress, concluding:

Well, based on the evidence that the Court has heard, the Court looks at this that the police officer gets a tip or some information from a concerned citizen; that information is detailed and has the name of the individual involved it has a description, it has a place where a transaction is going to take place, it has a vehicle that's going to come, it has an accomplice that's involved, it has a large number of details to it, so it sounds somewhat credible.

The police officer runs the DELJIS information on the defendant, on the name that he has. The concerned citizen is willing to stay involved to the extent of identifying the person from that photograph. Having pulled DELJIS, the police officer is aware that the defendant is on probation for trafficking in cocaine.

He goes out, he observed the person arrive, where he is supposed to, in a car he is supposed to, with the person that he is supposed to, watches that other person go in the house, come out after a very brief period of time, get in the car.

The concerned citizen then says – gets in contact with the police and says he is going to be going to a bus stop at such and such an address, and, lo and behold, that's exactly what happens.

Clearly, there is reasonable suspicion to stop the person and further investigate at that point in time, given that he has a prior conviction for trafficking in cocaine, given the nature of the business involving drugs, it is reasonable to pat down the individual and therein the drugs are found. So I think there is clearly a good search here.

I'm denying the motion to suppress.

7. Defendant again raised the issue of illegal search and seizure on direct appeal. The Delaware Supreme Court affirmed this Court's denial of the motion to suppress. The Supreme Court, in its January 27, 2004 Order, reviewed whether the

trial judge's findings are the result of a logical and orderly deductive process.⁶ The Supreme Court held that the trial judge properly applied the law to the facts of the case, and:

The totality of circumstances before the trial judge was sufficient to support a finding that the police had probable cause to search Cleveland.⁷ First, the non-anonymous citizen informant's tip was presumptively reliable.⁸ Further, the tip was detailed and predictive and the police corroboration extensive.⁹

8. Defendant cannot simply restate his claim regarding the failure to have the evidence suppressed as one of ineffective assistance of counsel and expect it to be considered anew. The Superior Court is not required to re-examine a claim that has received "substantive resolution" at an earlier time simply because the claim is refined or restated.¹⁰ Therefore, Defendant's claim is barred by Rule 61(i)(4).

9. Even if Defendant's claims were not procedurally barred, they are without merit. To prevail in his ineffective assistance of counsel claims, Defendant

⁶*Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

⁷*Illinois v. Gates*, 462 U.S. 213 (1983).

⁸*Bailey v. State*, 440 A.2d 997, 999 (Del. 1982).

⁹*Alabama v. White*, 496 U.S. 325 (1990)(detailed tip that predicts a suspect's future conduct has indicia of reliability).

¹⁰*Johnson v. State*, 612 A.2d 158, 158 (Del.1992).

must allege by clear facts the requirements of the *Strickland* test.¹¹ Under *Strickland*, Defendant must show that counsel's course of conduct "fell below an objective standard of reasonableness" and that such actions were prejudicial.¹² It is settled Delaware law that allegations that are entirely conclusory are legally insufficient to prove ineffective assistance to counsel.¹³ In setting forth his claim, Defendant is required to make and substantiate concrete allegations of both unreasonable attorney conduct and actual prejudice.¹⁴

10. The first three arguments in Defendant's Rule 61 motion focus on the testimony of Detective Richard Armorer at the suppression hearing. Detective Silva, who actually took Defendant into custody and seized the cocaine, was unavailable to testify for the State or to be cross-examined by the Defendant. Defendant argues that because Detective Silva was not present during the hearing, and counsel did not object to Detective Armorer's hearsay statements, Defendant's Constitutional right of confrontation has been violated. Defendant repeatedly argues that the Court, at counsel's request, should have excluded testimony of Detective Armorer because it

¹¹*Mapp v. State*, Del. Supr., No. 003, 1994, Holland, J. (Mar. 17, 1994)(ORDER).

¹²*Strickland v. Washington*, 466 U.S. 668, 668, 694 (1984).

¹³*State v. Brittingham*, Del. Super., Cr. A. No. IN91-01-1009-R1, Barron, J. (Dec. 29, 1994)(Order).

¹⁴*Robinson v. State*, 562 A.2d 1184, 1185 (Del. 1989).

was hearsay. Defendant's strategy in his Rule 61 motion is to attack the details of the ruling on the suppression motion in an effort to obtain a ruling which would render that suppression ruling null and void. If this Court should nullify that ruling, then, according to Defendant, the case against him fails because all of the evidence against him would be suppressed as fruit of the poisonous tree.

11. Hearsay evidence is admissible in a suppression hearing, and does not violate the Confrontation Clause of the Sixth Amendment to the United States Constitution under *Crawford*.¹⁵ In *Crawford* the United States Supreme Court held that, as a general rule, "[t]estimonial statements of witnesses absent from trial [can be] admitted only where the declarant is unavailable and only where the defendant has had a prior opportunity to cross-examine."¹⁶ This Constitutional right provided to defendants to confront the witnesses against them does not extend to suppression hearings. It only applies to criminal trials.¹⁷

12. Thus, all of Defendant's ineffective assistance of counsel claims based upon his contention that Detective Armorer's testimony was not legally admitted fail because they are based on a meritless legal premise. Defendant's attorney properly

¹⁵*Crawford v. Washington*, 541 U.S. 36, 59 (2004).

¹⁶*Id.*

¹⁷*Shockley v. State*, 269 A.2d 778, 781 (Del. 1970); *State v. Williams*, 2005 Del.Super. LEXIS 203, at *3.

sought suppression of the evidence, but the motion was denied. The fact that an attorney was unsuccessful in suppressing evidence which was obtained legally, does not indicate that counsel was ineffective. Failure to obtain suppression of evidence does not indicate conduct falling below an accepted standard of reasonableness.¹⁸ Defendant's postconviction application fails to state any concrete legal or factual bases to show unreasonable attorney conduct and actual prejudice. Therefore, his allegation of ineffective assistance of counsel is unsupported.

13. Defendant also argues that counsel was ineffective for failing to prepare for the suppression hearing and in raising issues on appeal. The transcript of the suppression hearing and rulings show that counsel was prepared for the hearing, and, contrary to Defendant's contention, was aware of the law involved. The issues of the legality of the arrest, and of the subsequent search and seizure, were thoroughly argued by counsel before this Court and the Supreme Court.

14. This Court only can consider a ground already adjudicated if the interest of justice exception applies. The interest of justice exception to the procedural bar of Rule 61(i)(4) is narrowly construed. The "movant must show that subsequent legal developments have revealed that the trial court lacked authority to convict or punish

¹⁸*State v. Finocchiaro*, 1994 WL 682434 at *3 (Del. Super).

him.”¹⁹ Defendant has failed to demonstrate that such subsequent legal developments exist.

15. This Court finds that reconsideration of Defendant’s claims is not warranted in the interest of justice. Defendant’s motion for postconviction relief must be denied as it is procedurally barred pursuant to Rule 61(i)(4). To protect the integrity of the procedural rules, the Court will not consider the merits of the postconviction claims where a procedural bar exists.²⁰

19. **THEREFORE**, Defendant’s Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY’S OFFICE - CRIMINAL DIV.

¹⁹*Flamer v. State*, 585 A.2d 736 (Del. 1994).

²⁰*State v. Gattis*, Del. Super., Cr. A. No. IN90-05-1017, Barron, J. (Dec. 28, 1995)(citing *Younger v. State*, 580 A.2d at 554; *Saunders v. State*, Del. Supr., No. 185, 1994, Walsh, J. (Jan. 13, 1995)(ORDER); *Hicks v. State*, Del. Supr., No. 417, 1991, Walsh, J. (May 5, 1992)(ORDER)).